

Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGRE-00 AID-05
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DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01
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NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01
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TO SECSTATE WASHDC PRIORITY 4199

C O N F I D E N T I A L SECTION 1 OF 2 USUN 2028

FROM LOS DEL

E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LOS SITREP JUNE 23, 1977

1. COMMITTEE I. EVENSEN'S DRAFT ARTICLE 27 (COUNCIL) GENERA-
TED INTENSE DEBATE HELPING CONFIRM THAT THE QUESTION OF DISTRI-
BUTION OF POWER WITHIN THE EXECUTIVE ORGAN IS ONE OF THE MOST
SENSITIVE UNRESOLVED ISSUES. THE PRINCIPAL DEVELOPING COUNTRY
OBJECTIONS TO EVENSEN'S FORMULATION ARE AS FOLLOWS:

--MEMBERSHIP IN 3 OF THE 5 CHAMBERS WOULD PROBABLY BE DECIDED
THROUGH DESIGNATION RATHER THAN "ELECTION" AS SPECIFIED IN
PARAGRAPH 1 OF ARTICLE 27. THE FIRST CHAMBER IS COMPOSED OF
"THE 5 MEMBERS" WHICH ARE MOST DEEPLY INVOLVED IN SEABED MINING.
TWO OTHER CHAMBERS OF 4 MEMBERS EACH ARE SELECTED "FROM AMONG
THE COUNTRIES WHICH ARE THE LARGEST" CONSUMERS AND PRODUCERS.

--THIS DESIGNATION WOULD LEAD TO "PERMANENT" SEATS FOR SOME
COUNTRIES.

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--THE PRODUCER AND CONSUMER CHAMBERS SHOULD BE CHANGED TO
"EXPORTERS" AND "IMPORTERS."

--THE PRINCIPLE OF ROTATING SEATS SHOULD BE MANDATORY.

--THE VOTING ARRANGEMENT REQUIRING A 2/3 MAJORITY OF THE

5 CHAMBERS ON SUBSTANTIVE QUESTIONS WOULD GIVE DEVELOPED COUNTRIES A VETO POWER.

--THE 18/18 SPLIT BETWEEN SPECIAL INTEREST AND GEOGRAPHIC DISTRIBUTION OF SEATS SHOULD BE 12/24 AS PROPOSED BY THE G-77.

--DEPENDING ON THE DISTRIBUTION OF THE 18 SEATS IN THE GEOGRAPHIC CHAMBERS, THE LDCS COULD BE DENIED THEIR RIGHTFUL 2/3 MAJORITY IN THE COUNCIL.

2. SINGAPORE (KOH) DELIVERED A LENGTHY INTERPRETATION OF EVENSEN'S TEXT, WHICH DREW CONSIDERABLE INTEREST. HE CONCLUDED THAT LDC'S WOULD COMMAND 24 OF 36 SEATS. KOH SAID THAT LDCS WOULD BE ENTITLED TO 17 SEATS IN THE GEOGRAPHIC DISTRIBUTION CATEGORY, BECAUSE THE INDUSTRIAL COUNTRIES WOULD ALREADY BE HEAVILY REPRESENTED IN 3 OF THE FIRST 4 CHAMBERS. EVENSEN CONFIRMED THAT HIS CALCULATIONS GENERALLY COINCIDED WITH KOH'S. SOME LDCS, LIKE LIBYA, GHANA, AND BURUNDI, REJECTED EVENSEN'S TEXT BECAUSE IT DID NOT GIVE APPROPRIATE WEIGHT TO THE GEOGRAPHIC DISTRIBUTION PRINCIPLE AND ALLEGEDLY HARKED BACK TO THE U.N. SECURITY COUNCIL MODEL. OTHERS, SUCH AS CHILE, PERU, AND IRAN SEEMED PREPARED TO CONSIDER THE EVENSEN TEXT IF SINGAPORE'S INTERPRETATION HELD.

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3. THE U.S. (DARMAN) REITERATED OUR PREFERENCE FOR A WEIGHTED VOTING SCHEME, BUT EXPRESSED WILLINGNESS TO CONSIDER EVENSEN'S FORMULATION ON ITS MERITS. DARMAN, AGREEING WITH SINGAPORE, SAID THAT THE TEXT STILL GIVES HEAVY EMPHASIS TO LDCS, REFLECTING G-77 PROPOSALS. THE U.S. WOULD PREFER A 24/12 SPLIT BETWEEN SPECIAL INTEREST AND GEOGRAPHIC SEATS, HE ADDED. DARMAN DENIED THAT THE EVENSEN FORMULATION IMPLIED PERMANENT COUNCIL SEATS FOR SOME COUNTRIES. AS SEABED MINING DEVELOPED, THERE WOULD PROBABLY BE NEW ENTRANTS WHO WOULD QUALIFY FOR THE FIRST CHAMBER. FURTHERMORE, THE RANK ORDER OF LEADING CONSUMERS AND PRODUCERS ALSO WOULD CHANGE IN A DYNAMIC WORLD ECONOMY. DARMAN QUESTIONED THE NOTION THAT INDUSTRIAL COUNTRIES WOULD HAVE A VETO IN THE COUNCIL, ARGUING THAT THE LDCS, WITH VIRTUALLY ABSOLUTE CONTROL OVER TWO CHANGERS, WOULD BE MORE ASSURED OF A VETO.

4. DARMAN RECALLED AN EARLIER U.S. PROPOSAL ON ARTICLE 22 PROVIDING FOR TECHNICAL COMMISSION, RATHER THAN COUNCIL, APPROVAL OF MINING CONTRACTS. HE SAID THE U.S. STILL FAVORS THAT APPROACH, ALTHOUGH IT WAS NOT INCORPORATED IN EVENSEN'S LATEST TEXT. ALTERNATIVELY,

DARMAN PROPOSED THE FOLLOWING ADDITIONAL PARAGRAPH FOR ARTICLE 27: BEGIN QUOTE THE COUNCIL SHALL ACT EXPEDITIOUSLY, IN ACCORDANCE WITH ARTICLE 22 PARAGRAPH 3, IN REVIEWING PLANS OF WORK SUBMITTED BY THE TECHNICAL COMMISSION. IF THE COUNCIL DOES NOT AFFIRM A SPECIFIC MOTION OF A MEMBER OF THE COUNCIL TO APPROVE OR TO DISAPPROVE A PLAN OF WORK WITHIN 60 DAYS, THE PLAN OF WORK SHALL BE DEEMED TO HAVE BEEN APPROVED. END QUOTE

NOTE: ASSUMING A 2/3 MAJORITY REQUIRED FOR SUBSTANTIVE DECISIONS AND AN EFFECTIVE U.S. VETO IN THE COUNCIL, THIS PROCEDURE SHOULD VIRTUALLY INSURE APPROVAL OF CONTRACTS SUBMITTED BY THE TECHNICAL COMMISSION.

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5. COMMITTEE II. IN THE FORMAL MEETING COLOMBIA AGAIN PROPOSED THAT THE SECRETARIAT UNDERTAKE A STUDY TO ANALYZE THE EFFECTS WHICH WOULD RESULT FROM THE APPLICATION OF THREE SHELF DELIMITATION CRITERIA, I.E., THE 200-MILE DISTANCE CRITERION, THE 500-METER DEPTH CRITERION, AND THE IRISH FORMULA RESPECTIVELY. A PREDICTABLE DIVISION AND DEBATE ON THIS PROPOSAL ENSURED. THE LL/GDS GROUP DEMANDED THAT THE PROPOSED STUDY BE INITIATED ASAP IN THE INTEREST OF INTELLIGENT AND OBJECTIVE DECISION-MAKING; THE COASTAL STATES, AND ESPECIALLY THE BROAD MARGINEERS AMONG THEM, OPPOSED THE STUDY ON THE BASIS OF FEASIBILITY, COST AND TIME CONSIDERATIONS. AUSTRIA SUGGESTED THAT THE SECRETARIAT PRODUCE A PRELIMINARY STUDY BASED UPON EXISTING DATA PROVIDED BY THOSE STATES WHICH HAVE CONDUCTED MARGIN SURVEYS USING ONE OF THE PROPOSED METHODS.

6. THE TASK OF FRAMING THESE TERMS OF REFERENCE WAS

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DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01
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NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01
SP-02 SS-15 USIA-06 AF-10 ARA-10 EA-07 EUR-12
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C O N F I D E N T I A L SECTION 2 OF 2 USUN 2028

FROM LOS DEL

GIVEN TO AUSTRIA AND COLOMBIA. FYI: WE ARE NOT CERTAIN IF THE PROPOSED STUDY WILL BE COMPLETED OR EVEN INITIATED; HOWEVER, THE ISSUE DID PROVIDE, ONCE AGAIN, THE OPPORTUNITY FOR THE LL/GDS GROUP TO FLEX ITS POLITICAL AND NUMERICAL MUSCLE.

7. COMMITTEE II MET IN AN INFORMAL SESSION TO DISCUSS ISSUES WHICH DO NOT SPECIFICALLY FALL WITHIN NEGOTIATING GROUPS. THE FRG TABLED AN AMENDMENT TO ARTICLE 2, PART II OF THE RSNT IN THE FORM OF A PARAGRAPH TWO WHICH READS: BEGIN QUOTE THE RIGHT REFERRED TO IN PARAGRAPH (1) SHALL NOT BE EXERCISED IN SUCH A MANNER AS TO CUT OFF FROM THE HIGH SEAS, INCLUDING THE EXCLUSIVE ECONOMIC ZONES, THE TERRITORIAL SEA OF ANOTHER STATE OR ANY PART THEREOF. END QUOTE FRANCE, WHILE STATING ITS SUPPORT FOR THE PRINCIPLES OF THE FRG AMENDMENT, OFFERED AN ALTERNATIVE FORMULATION. THE FRENCH PROPOSAL PROVIDES: "WHEN THE EXERCISE OF THE RIGHTS CONTAINED IN PARAGRAPH (1) HAS THE EFFECT OF ENCOMPASSING AS TERRI-
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TORIAL WATER, ZONES PREVIOUSLY CONSIDERED AS THE HIGH SEAS, AND THUS CUTTING OFF FROM THE HIGH SEAS THE TERRITORIAL SEA OF ANOTHER STATE OR A PART THEREOF, THE RIGHTS OF TRANSIT PASSAGE WITHOUT OBSTACLES FOR MARITIME AND AIR NAVIGATION APPLIES TO THESE WATERS" NUMEROUS INTERVENTIONS (PRIMARILY EUROPEAN) WERE MADE IN SUPPORT OF BOTH FORMULATIONS. THE PHILIPPINES RE-INTRODUCED AS ARTICLE II BIS ON "HISTORICAL WATERS" WHICH WOULD HAVE THE EFFECT OF EXEMPTING SUCH WATER FROM THE MAXIMUM PROVIDED IN THE CONVENTION FOR THE TERRITORIAL SEA. JAPAN, THE UK, AND LIBYA OPPOSED THE AMENDMENT; IT WAS SUPPORTED BY ECUADOR, EL SALVADOR, AND KENYA. BANGLADESH REINTRODUCED ITS PROPOSAL ON FLOATING BASELINES AND WAS FOLLOWED BY A CHORUS OF 27 SUPPORTERS, MOSTLY ISLANIC NATIONS. INDIA NOTED THAT IF SUCH BASE-

LINES WERE APPROVED BY THE CONFERENCE, THEY WOULD NOT, IN ANY FUTURE NEGOTIATIONS BE USED FOR DETERMINATION OF MARITIME ZONES ON THE EEZ. CANADA OFFERED AN AMENDMENT TO DELETE PARAGRAPH 2 OF ARTICLE 20, ON THE GROUND THAT THE PRESENT LANGUAGE OF THE RSNT IS A "SWEEPING AND UNWARRANTED RESTRICTION ON THE SOVEREIGNTY OF THE COASTAL STATE IN ITS TERRITORIAL SEA." THE MARITIME STATES, PRE-
DICTABLY, VIGOROUSLY OPPOSED THIS AMENDMENT AND WERE SUPPORTED BY SEVERAL LDCS, ALTHOUGH SEVERAL STATES INDICATED 20 (2) SHOULD BE AMENDED. THE US (CLINGAN) NOTED THAT ARTICLE 20 (2) DEMANDS SUBSTANTIVE REVISION BUT WOULD PREFER TO AWAIT THE OUTCOME OF THE SMALL WORKING GROUP OF COMMITTEE III BEFORE SUBSTANTIVELY DISCUSSING THE ARTICLE. THE DISCUSSION ON THIS PROPOSAL ELICITED SEVERAL OTHER PROPOSED AMENDMENTS: (1) AUSTRALIA PROPOSED AMENDING ARTICLE 20 (2) TO READ: "SUCH LAWS AND REGULATIONS SHALL NOT APPLY TO THE DESIGN, CONSTRUCTION, MANNING OR EQUIPMENT OF FOREIGN SHIPS UNLESS
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THEY ARE GIVEN EFFECT TO GENERALLY ACCEPTED INTERNATIONAL RULES." (2) MOROCCO FOLLOWED AND OFFERED A SIMILARLY WORDED AMENDMENT. (3) KENYA PROPOSED ADDING AT THE END OF THE AUSTRALIAN PROPOSAL "OR WHERE SUCH RULES DON'T EXIST." SENEGAL, SUPPORTED BY KENYA, PROPOSED THE DELETION OF "ON MATTERS REGULATED" AND WOULD SEEK TO SPECIFY THE MEANING OF "GENERALLY ACCEPTED INTERNATIONAL RULES" CONTAINED IN THE PRESENT TEXT.

8. COMMITTEE III. DEBATE CONTINUED ON PROPOSED AMENDMENTS TO ARTICLE 28 (PORT STATE ENFORCEMENT) WITH PARTICULAR EMPHASIS ON FRENCH AMENDMENT TO REQUIRE CONSENT OF FLAG STATE BEFORE PORT STATE COULD PROSECUTE FOR VIOLATIONS IF INTERNATIONAL DISCHARGE REGULATIONS OCCURRING BEYOND 200 MILES. PROPOSAL AND DEBATE WENT TO KEY ISSUE OF UNIVERSALITY, AS REFLECTED IN RSNT, WITH SUPPORT FOR CONCEPT OF FRENCH AMENDMENT FROM ARGENTINA, YUGOSLAVIA, SINGAPORE, IRELAND, PORTUGAL, INDIA, JAPAN, BRAZIL AND CUBA. USSR, WHILE SPEAKING AGAINST US AMENDMENT TO GIVE PORT STATE FURTHER COMPETENCY OVER OFFENSES COMMITTED IN OTHER PARTIES' ECONOMIC ZONES, RESERVED POSITION ON FRENCH AMENDMENT PENDING OUTCOME OF DEBATE ON ARTICLE 38 (FLAG STATE PREEMPTION). U.S., CANADA, KENYA, AUSTRALIA, NEW ZEALAND, NETHERLANDS, AND LIBYA ALL STRONGLY SUPPORTED CONCEPT OF UNIVERSALITY OF PORT STATE RIGHT. AFTER CHAIRMAN STATED INTENTION TO ARRIVE AT RESOLUTION OF APPARENT IMPASSE THROUGH CONSULTATIONS, GROUP PROCEEDED TO IN CONCLUSION DEBATE ON PARAGRAPH 4 (TRANSFER OF PORT STATE PROCEEDING TO COASTAL STATE IN WHOSE JURISDICTION OFFENSE OCCURED).

9. IN INFORMAL EVENING MEETING, AGREEMENT WAS QUICKLY
REACHED ON NEW GREEK PROPOSAL FOR ARTICLE 30 (7).
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Message Attributes

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